



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

SEP 24 2001

OFFICE OF
CIVIL RIGHTS

CERTIFIED MAIL #7000 1670 0006 0859 2388
RETURN RECEIPT REQUESTED

In Reply Refer to:
EPA File No: 4R-00-R8

Re: **Letter of Rejection**

Dear [REDACTED]:

On June 30, 2000, you filed a complaint with the U.S. Environmental Protection Agency, Office of Civil Rights. The complaint alleges violations of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and EPA's regulations implementing Title VI found at 40 C.F.R. Part 7 by the State of Colorado and the Colorado Department of Public Health and Environment. More specifically, in the complaint you allege that the State of Colorado and the CDPHE discriminated against minority residents of Adams County, Colorado in implementing environmental cleanup activities at the U.S. Rocky Mountain Arsenal. The purpose of this letter is to inform you that your complaint has been rejected by OCR.

Under Title VI, a recipient of federal financial assistance may not discriminate on the basis of race, color, or national origin. Pursuant to EPA's Title VI implementing regulations, OCR conducts a preliminary review of Title VI complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). A complaint must meet the jurisdictional requirements described in EPA's Title VI regulations for investigations. First, it must be in writing. Second, it must describe an alleged discriminatory act that violates EPA's Title VI regulations (*i.e.*, an alleged discriminatory act based on race, color, or national origin). Third, it must be filed within 180 days of the alleged discriminatory act. 40 C.F.R. § 7.120. OCR considers a complaint filed on the date it is received by EPA/OCR or by another Federal agency. Fourth, because EPA's Title VI regulations only apply to applicants and recipients of EPA assistance, the complaint must identify an applicant or recipient of EPA assistance that allegedly committed the discriminatory act. 40 C.F.R. § 7.15.

Your complaint has two allegations. The first allegation states that the State of Colorado or the CDPHE issued a landfill treatment system permit in violation of Title VI. The second allegation refers to the enforcement of groundwater standards by the State of Colorado for DIMP plumes. Neither of these allegations meets the jurisdictional requirements in 40 C.F.R. Part 7 therefore, they are both rejected.

As explained to you in our August 3, 2001, partial rejection/request for clarification letter, OCR will not accept for investigation your allegation that the State of Colorado or CDPHE issued a landfill treatment system permit in violation of Title VI and EPA's Title VI regulations. This allegation does not meet three of the four jurisdictional requirements in 40 C.F.R. Part 7. First, the allegation does not identify an applicant or recipient of EPA assistance as having committed an alleged discriminatory act. Contrary to your assertion, neither the State of Colorado nor the CDPHE issued a landfill treatment system permit. None of the exhibits attached to your August 15, 2001, response show that either the State of Colorado or CDPHE issued the permit. Rather, it was the EPA that issued the landfill wastewater treatment system permit and developed the discharge limits to be used in the RMA ground water remediation and on-site hazardous waste landfill construction. In addition, because no discriminatory act was taken by a recipient of EPA assistance, this allegation could not be timely nor could it describe an alleged violation of Part 7. Based on these facts, OCR has no recourse but to reiterate its earlier rejection of this allegation.

The second allegation in your complaint does not meet three of the four jurisdictional requirements in 40 C.F.R. Part 7. In our August 3, 2001, letter requesting clarification, we asked you to provide us with a specific date or time period in which the State failed to enforce groundwater standards for DIMP plumes. The dates that you provide to us in your August 15, 2001, response do not refer to an action by the State that would give rise to a Title VI allegation. In your letter you state that the 180-day period for the filing of the complaint began, at the earliest, on April 11, 2000, when you received a copy of the State's study *"Health Risk Associated with Use of DIMP-Contaminated Groundwater for Garden Irrigation."* You also say that the State issued and met with the Citizens Advisory Board on April 18, 2000, to discuss the risk assessment evaluating the public health significance of consuming fruits and vegetables irrigated with DIMP-contaminated water. Further, you state that on April 27, 2000 and late April 2000 you received copies of both "Volume one of the On-Post ROD from the State and the RMA-RAB Record of Proceedings." None of those events, however, give rise to a Title VI allegation because they are not actions by an EPA recipient upon which a Title VI complaint can be based. As for your mention of October 10, 2000 as another possible date beginning the 180-day clock, that date also does not give rise to an action meriting investigation under Title VI. October 10, 2000 is the date on which you addressed the Colorado Water Quality Commission, not a date on which the State took any actions with regard to groundwater standards for the RMA.

The actions taken by the State of Colorado, relevant to this allegation, that could potentially be subject to a Title VI complaint, occurred more than 180 days before your complaint was filed. The Record of Decision regarding all activities to be taken at the RMA was subject to notice and comment in November 1996 and the groundwater standards for the DIMP plume have been in place since 1998. Thus, there is no action by the State of Colorado with respect to the DIMP plume that occurred within 180 days of June 30, 2000. In addition, this allegation does not concern a potential violation of Part 7, for the reasons described above. Based on these facts, OCR has no recourse but to reject this second allegation of your complaint.

Given all of the above, OCR must reject your complaint. If you have any questions, please contact Eva Hahn by phone at (202) 564-8186, by e-mail at hahn.eva@epa.gov, or by mail to the U.S. EPA (Mail Code 2201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,


Karen D. Higginbotham
Acting Director

cc: Jane E. Norton, Director
Colorado Department of Public Health & Environment
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